

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

JASON R. BENDER,

Plaintiff,

v.

STEVEN ROBERTSON,

Defendant.

C.A. No. 06-0772-GMS

MOTION TO WITHDRAW AS COUNSEL

Pursuant to District Court Local Rule 83.7 and Delaware Lawyer's Rules of Professional Conduct ("Professional Conduct Rules") 1.16 (a) and (b) and 1.4, Smith, Katzenstein & Furlow LLP ("SKF") and Brady, Richardson, Beauregard & Chasanov ("BRBC") hereby move to withdraw as counsel for Plaintiff, Jason R. Bender ("Plaintiff") on the grounds that SKF and BRBC have been unable to communicate with the Plaintiff whose whereabouts were unknown to counsel and Plaintiff has otherwise rendered this representation unreasonably difficult. In support of this motion, SKF and BRBC represent as follows:

1. In or about June 2005, BRBC was retained to represent Plaintiff in a related action, subsequently, BRBC expanded its representation to include this action.
2. Subsequently, in or about December 2006, SKF was retained to represent Plaintiff as co-counsel (collectively with BRBC, "Counsel") in connection with this action.
3. Counsel has been unable to reach Plaintiff for several months. In the past few weeks counsel was able to confirm that the Plaintiff was in a residential treatment facility in Delaware City. Plaintiff did not notify Counsel of his change in circumstance.

4. Under Professional Conduct Rule 1.16(b), the Plaintiff's conduct leading up to and in connection with his relocation has rendered Counsel's representation "unreasonably difficult." Accordingly, withdraw is appropriate here. Moreover, Counsel cannot represent Plaintiff in accordance with their ethical obligations under Professional Conduct Rule 1.4 (governing communication with the client) when the client fails to notify them of his location. Thus, pursuant to Professional Conduct Rule 1.16(a)(1), counsel shall withdraw if "the representation will result in violation of the rules of professional conduct or other law."

5. Counsel has notified Plaintiff via letter of their intent to withdraw. In accordance with District Court Local Rule 83.7, Counsel is sending a copy of this motion via certified mail to the Plaintiff's last known address and the address of the treatment facility in Delaware City as indicated on the certificate of service filed contemporaneously with this motion.

6. Thus, based on the foregoing, good cause exists for the Court to grant Counsel's motion to withdraw under these circumstances.

WHEREFORE, SKF and BRBC request permission to withdraw as counsel to the Plaintiff pursuant to District Court Local Rule 83.7 and Professional Conduct Rules 1.16(a) and (b) and 1.4.

WHEREFORE, Smith, Katzenstein & Furlow LLP and Brady, Richardson, Beauregard & Chasanov respectfully request that the Court permit them to withdraw as counsel to the Plaintiff in accordance with the proposed Order attached hereto.

SMITH, KATZENSTEIN & FURLOW LLP

/s/ Etta R. Wolfe

Laurence V. Cronin (Id. No. 2385)

Etta R. Wolfe (Id. No. 4164)

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and

BRADY, RICHARDSON, BEAUREGARD &
CHASANOV

/s/ Andre M. Beauregard

Andre M. Beauregard (Id. No. 2427)

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Date: November 7, 2007

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ORDER

THIS ____ day of _____, 2007, the Court having duly considered the motion of Smith, Katzenstein & Furlow LLP and Brady, Richardson, Beauregard & Chasanov to withdraw from their representation of Plaintiff Jason R. Bender in this matter and it appearing that reasonable notice has been afforded the Plaintiff and all parties in interest.

IT IS ORDERED that Smith, Katzenstein & Furlow LLP and Brady, Richardson, Beauregard & Chasanov are granted leave to withdraw from representation of the Plaintiff pursuant to District Court Local Rule 83.7 and Professional Conduct Rules 1.16(a) and (b) and 1.4.

Judge Gregory M. Sleet

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November, 2007, a copy of the foregoing **MOTION TO WITHDRAW AS COUNSEL** was served on the following parties in the manner indicated:

VIA CERTIFIED MAIL

Jason R. Bender
8989 Piney Crest
A17 Potnets Bayside
Millsboro, DE 19966

and

Jason R. Bender
c/o Gateway Foundation
PO Box 547
Delaware City, DE 19706

VIA ELECTRONIC FILING

Ralph K. Durstein, III, Esquire
State of Delaware
Department of Justice
Carvel State Office Building
820 North French Street
Wilmington, DE 19801

/s/ Etta R. Wolfe
Etta R. Wolfe